

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

In the Matter of )  
 )  
Joint Petition for Arbitration of )  
 )  
NewSouth Communications Corp., )  
NuVox Communications, Inc. )  
KMC Telecom V, Inc., KMC Telecom III LLC, and )  
Xspedius Communications, LLC on Behalf of its )  
Operating Subsidiaries Xspedius Management Co. )  
Switched Services, LLC, Xspedius Management Co. )  
Of Charleston, LLC, Xspedius Management )  
Co. of Columbia, LLC, Xspedius Management Co. )  
Of Greenville, LLC, and Xspedius Management Co. )  
Of Spartanburg, LLC )  
 )  
Of an Interconnection Agreement with )  
BellSouth Telecommunications, Inc. )  
Pursuant to Section 252(b) of the )  
Communications Act of 1934, as Amended )  
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Docket No. 2005-57-C

**MOTION TO MOVE *TRO* ARBITRATION ISSUES  
TO GENERIC PROCEEDING**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully requests that the Public Service Commission of South Carolina ("Commission") move Arbitration Issues 26, 36, 37, 38 and 51 (including subparts) ("*TRO* Arbitration Issues") to the pending Generic Proceeding (Docket No. 2004-316-C) for consideration and resolution. Alternatively, BellSouth requests that the Commission postpone any decision on the *TRO* Arbitration Issues until the Commission decides those issues in the context of the Generic Proceeding.

**ARGUMENT**

NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc. and KMC Telecom III, LLC, and Xspedius Communications, LLC on behalf of its operating

subsidiaries (collectively “Joint Petitioners”) and BellSouth are currently engaged in a section 252 arbitration proceeding before the Commission. Several issues in dispute in the arbitration proceeding relate to the Federal Communication Commission’s (“FCC”) findings in the *Triennial Review Order*, FCC 03-36, 18 FCC Rcd 16978 (Aug. 21, 2003) (“*TRO*”) regarding commingling, EEL audits, and line conditioning (previously defined as *TRO* Arbitration Issues). The Commission has established Docket No. 2004-316-C as a generic docket, and this docket has been used to address change-of-law issues arising from the Federal Communications Commission’s Triennial Review Order, FCC 03-36, 18 FCC Rcd 16978 (Aug. 21, 2003) (“*TRO*”), *Order and Notice of Proposed Rulemaking* in WC Docket No. 04-313, CC Docket No. 01-338 (rel. Aug. 20, 2004) (“*Interim Rules Order*”) (“*IRO*”), and *Triennial Review Remand Order*, FCC 04-290, WC Docket No. 04-313, CC Docket No. 01-338 (rel. Feb. 4, 2005) (“*TRRO*”).

BellSouth and the Competitive Carriers of the South (“CompSouth”) have been working diligently on a joint issues list for the Generic Docket and have, in fact, filed an issues list with the Florida Public Service Commission.<sup>1</sup> The *TRO* Arbitration Issues are similar, if not identical, to issues on that joint issues list. Specifically, as set forth in generic issues matrix that was filed in Florida (a copy of which is attached as Exhibit A to this Motion), Issue 26 in this arbitration is identical to Issue 14 in the generic issues list; Issue 51 in this arbitration is virtually identical to Issue 29 in the generic issues list; and Issues 36-38 in this arbitration are encompassed within

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<sup>1</sup> BellSouth and CompSouth are working together to file a joint issues list in the Generic Docket that is pending before this Commission in the near future. BellSouth believes this issue list attached as Exhibit A should be used in each pending change of law proceeding in the Southeastern region. To date, BellSouth understands that CompSouth has agreed to use this list in Florida only, and has indicated to BellSouth that it may have minor wording changes to some of the issues. No such changes have been identified to BellSouth since May 2, 2005, which is the date when BellSouth indicated to CompSouth its willingness to use this list.

Issue 26 in the generic issues list. Consequently, it is more than likely that all of the *TRO* Arbitration Issues will be addressed in the Commission's Generic Docket.

BellSouth believes it is neither necessary nor appropriate to expend the time and resources of the Commission, the Commission's Staff, and the Parties addressing the *TRO* Arbitration Issues in the context of this Section 252 arbitration when the same issues are likely to affect all CLECs in South Carolina that have interconnection agreements with BellSouth. Accordingly, BellSouth submits that the *TRO* Arbitration Issues should be addressed in the Generic Proceeding, where all affected entities will have the opportunity to be heard on these issues and the Commission can render a single decision applicable to all affected entities. BellSouth submits that the Commission should reject the piecemeal approach proposed by the Joint Petitioners because, in addition to duplicating scarce resources, it also creates the unnecessary risk of inconsistent decisions being rendered in this docket and the Generic Proceeding.

Additionally, moving these issues into the Generic Proceeding is consistent with the Commission's practice in the past of creating generic proceedings to address issues that originally were presented in two-party disputes but which likely would affect the industry as a whole. For example, rather than addressing the proper classification of lines serving pools and elevators in the context of a two-party complaint proceeding, the Commission established a generic docket (No. 2005-15-C) to consider the issue on an industry-wide basis. The Commission also has convened generic dockets to address local competition in South Carolina (Docket No. 96-018-C), to implement certain provisions of section 58-9-576 of the South Carolina Code (Docket No. 2000-407-C), to address rates for intrastate operator-assisted calls

(Docket No. 2000-407-C), and to address the general concept of an emergency services continuity plan (Docket No. 2005-100-C).<sup>2</sup>

In the event the Joint Petitioners argue that the Commission must decide the *TRO* Arbitration Issues in a Section 252 arbitration, the Commission should be aware that the Joint Petitioners jointly agreed with BellSouth to move other issues in the arbitration to the Generic Proceeding for consideration and resolution. Additionally, BellSouth's instant Motion does not require the Commission to decide these issues outside the context of a Section 252 arbitration. Rather, it simply requests that the Commission address the *TRO* Arbitration Issues in conjunction with the Commission's consideration of identical or similar issues in the Generic Proceeding.

#### CONCLUSION

For the reasons set forth above, BellSouth requests that the Commission move Arbitration Issues 26, 36, 37, 38 and 51 (including subparts) to the pending Generic Proceeding (Docket No. 2004-316-C) for consideration and resolution. Alternatively, BellSouth requests that the Commission postpone any decision on the *TRO* Arbitration Issues until the Commission decides the issues in the context of the Generic Proceeding.

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<sup>2</sup> BellSouth acknowledges that the Florida Public Service Commission, in Order No. PSC-05-00443-PCO-TP, rejected BellSouth's request to move the *TRO* Arbitration Issues to the Florida Generic Proceeding. In reaching this decision, the Florida Commission focused solely on the fact that it believed there would be no efficiencies in moving these issues to the Florida Generic Proceeding. BellSouth submits that this decision should not dissuade this Commission from granting BellSouth's motion. Simply stated, issues common to all CLECs relating to the *TRO* will be addressed in the pending arbitration as well as the Generic Proceeding. As a result, the Commission's decision on these issues in the arbitration will impact (either directly or indirectly) all CLECs. Consequently, and consistent with its past practice, the Commission should address these common issues in the Generic Proceeding so that all CLECs can participate in that decision. Alternatively, the Commission should defer resolving the common issues until the Commission decides the same or similar issues in the Generic Proceeding.

Respectfully submitted, this 26th day of May, 2005.

BELLSOUTH TELECOMMUNICATIONS, INC.

A handwritten signature in black ink that reads "Patrick Turner". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

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# EXHIBIT A

**CHANGE OF LAW GENERIC DOCKET  
ISSUES MATRIX**

**ATTACHMENT A**

NO.	ISSUE DESCRIPTION
8	<p><b>TRRO / FINAL RULES:</b></p> <p>(a) Does the Commission have the authority to require BellSouth to include in its interconnection agreements entered into pursuant to Section 252, network elements under either state law, or pursuant to Section 271 or any other federal law other than Section 251?</p> <p>(b) If the answer to part (a) is affirmative in any respect, does the Authority have the authority to establish rates for such elements?</p> <p>(c) If the answer to part (a) or (b) is affirmative in any respect, (i) what language, if any, should be included in the ICA with regard to the rates for such elements, and (ii) what language, if any, should be included in the ICA with regard to the terms and conditions for such elements?</p>
9	<p><b>TRRO / FINAL RULES:</b> What conditions, if any, should be imposed on moving, adding, or changing orders to a CLEC's respective embedded bases of switching, high-capacity loops and dedicated transport, and what is the appropriate language to implement such conditions, if any?</p>
10	<p><b>TRRO/FINAL RULES:</b> What rates, terms, and conditions should govern the transition of existing network elements that BellSouth is no longer obligated to provide as Section 251 UNEs to non-Section 251 network elements and other services?</p>
11	<p><b>TRRO / FINAL RULES:</b> What rates, terms and conditions, if any, should apply to UNEs that are not converted on or before March 11, 2006, and what impact, if any, should the conduct of the parties have upon the determination of the applicable rates, terms and conditions that apply in such circumstances?</p>
12	<p><b>TRRO / FINAL RULES:</b> Should identifiable orders properly placed that should have been provisioned before March 11, 2005, but were not provisioned due to BellSouth errors in order processing or provisioning, be included in the "embedded base?"</p>
13	<p><b>TRRO / FINAL RULES:</b> Should network elements de-listed under section 251(c) (3) be removed from the SQM/PMAP/SEEM?</p>
14	<p><b>TRO - COMMINGLING:</b> What is the scope of commingling allowed under the FCC's rules and orders and what language should be included in Interconnection Agreements to implement commingling (including rates)?</p>
15	<p><b>TRO - CONVERSIONS:</b> Is BellSouth required to provide conversion of special access circuits to UNE pricing, and, if so, at what rates, terms and conditions and during what timeframe should such new requests for such conversions be effectuated?</p>
16	<p><b>TRO – CONVERSIONS:</b> What are the appropriate rates, terms, conditions and effective dates, if any, for conversion requests that were pending on the effective date of the TRO?</p>
17	<p><b>TRO – LINE SHARING:</b> Is BellSouth obligated pursuant to the Telecommunications Act of 1996 and FCC Orders to provide line sharing to new CLEC customers after October 1, 2004?</p>

**CHANGE OF LAW GENERIC DOCKET  
ISSUES MATRIX**

**ATTACHMENT A**

NO.	ISSUE DESCRIPTION
18	<b>TRO – LINE SHARING – TRANSITION:</b> If the answer to foregoing issue is negative, what is the appropriate language for transitioning off a CLEC’s existing line sharing arrangements?
19	<b>TRO – LINE SPLITTING:</b> What is the appropriate ICA language to implement BellSouth’s obligations with regard to line splitting?
20	<b>TRO – SUB-LOOP CONCENTRATION:</b> What is the appropriate ICA language, if any, to address sub loop feeder or sub loop concentration?
21	<b>TRO – PACKET SWITCHING:</b> What is the appropriate ICA language, if any, to address packet switching?
22	<b>TRO – CALL-RELATED DATABASES:</b> What is the appropriate ICA language, if any, to address access to call related databases?
23	<b>TRO – GREENFIELD AREAS:</b> a) What is the appropriate definition of minimum point of entry (“MPOE”)? b) What is the appropriate language to implement BellSouth’s obligation, if any, to offer unbundled access to newly-deployed or ‘greenfield’ fiber loops, including fiber loops deployed to the minimum point of entry (“MPOE”) of a multiple dwelling unit that is predominantly residential, and what, if any, impact does the ownership of the inside wiring from the MPOE to each end user have on this obligation?
24	<b>TRO – HYBRID LOOPS:</b> What is the appropriate ICA language to implement BellSouth’s obligation to provide unbundled access to hybrid loops?
25	<b>TRO – END USER PREMISES:</b> Under the FCC’s definition of a loop found in 47 C.F.R. §51.319(a), is a mobile switching center or cell site an “end user customer’s premises”?
26	<b>TRO – ROUTINE NETWORK MODIFICATION:</b> What is the appropriate ICA language to implement BellSouth’s obligation to provide routine network modifications?
27	<b>TRO – ROUTINE NETWORK MODIFICATION:</b> What is the appropriate process for establishing a rate, if any, to allow for the cost of a routine network modification that is not already recovered in Commission-approved recurring or non-recurring rates? What is the appropriate language, if any, to incorporate into the ICAs?
28	<b>TRO – FIBER TO THE HOME:</b> What is the appropriate language, if any, to address access to overbuild deployments of fiber to the home and fiber to the curb facilities?
29	<b>TRO – EELS AUDITS:</b> What is the appropriate ICA language to implement BellSouth’s EEL audit rights, if any, under the TRO?
30	<b>252(i):</b> What is the appropriate language to implement the FCC’s “entire agreement” rule under Section 252(i)?
31	<b>ISP Remand Core Forbearance Order:</b> What language should be used to incorporate the FCC’s <i>ISP Remand Core Forbearance Order</i> into interconnection agreements?



**CHANGE OF LAW GENERIC DOCKET  
ISSUES MATRIX**

**ATTACHMENT A**

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NO.	ISSUE DESCRIPTION
32	<b>General Issue:</b> How should the determinations made in this proceeding be incorporated into existing § 252 interconnection agreements?

# CERTIFICATE OF SERVICE

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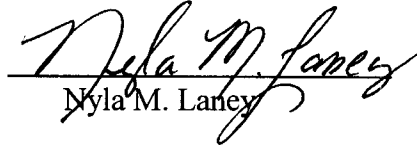
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